

Citation: *M. D. v. Canada Employment Insurance Commission*, 2015 SSTGDEI 94

Date: May 25, 2015

File number: GE-15-1139

GENERAL DIVISION - Employment Insurance Section

Between:

M. D.

Appellant

and

Canada Employment Insurance Commission

Respondent

Decision by: Takis Pappas, Member, General Division - Employment Insurance Section

Heard by: Teleconference on May 25, 2015

REASONS AND DECISION

PERSONS IN ATTENDANCE: M. D.

INTRODUCTION

[1] The Appellant filed a claim for Employment Insurance benefits on January 13, 2015.

[2] The Appellant requested that her application for benefits filed on January 13, 2015 be antedated to December 31, 2013 the date he was no longer employed.

[3] On March 13, 2015, the Respondent denied the Appellant's request for reconsideration because she did not show good cause throughout the entire period of the delay in filing her claim. The Appellant appealed to the Social Security Tribunal on March 27, 2015.

[4] The hearing was held by Teleconference for the following reasons:

- a) the appellant would be the only party at the hearing;
- b) the credibility of the parties and
- c) the complexity of the appeal.

ISSUE

[5] Whether the Appellant's initial claim for benefits can be considered to have been made on an earlier day pursuant to subsection 10(4) of the *Employment Insurance Act* (the Act).

THE LAW

[6] Subsection 10(4) of the Act sets out the requirements to allow a claimant's initial claim for benefits to be considered as having been made on an earlier day.

[7] For an initial claim for benefits to be antedated to an earlier date, claimants must show that:

- a) they qualified to receive benefits on the earlier day; and
- b) there was good cause for the delay throughout the period, starting on the earlier day and ending on the day when the initial claim was actually made.

[8] Whether there is good cause to antedate a claim for benefits is a question of mixed fact and law (*Attorney General of Canada v. Burke*, 2012 FCA 139; *Attorney General of Canada v. Innes*, 2010 FCA 341; *Attorney General of Canada v. Albrecht*, A-172-85).

EVIDENCE

[9] The Appellant filed a claim for Employment Insurance benefits on January 13, 2015.

[10] The Appellant requested that her application for benefits filed on January 13, 2015 be antedated to December 31, 2013 the date she was no longer employed.

[11] The Appellant stated that that she delayed filing her claim because she was looking for employment and she had never applied for Employment Insurance before and was unfamiliar with it. She has been looking for full time employment and no longer has any money in her savings account.

[12] The Respondent concluded that the claimant failed to show good cause throughout the entire period of the delay in filing her claim for Employment Insurance benefits.

[13] In her request for reconsideration, the Appellant wrote that she did not apply immediately because she thought she would find employment and while searching for employment she lived off of her savings and once her savings ran out she needed to apply for Employment Insurance benefits. She stated that she has never applied for benefits and was unaware of her eligibility and feels she should not be denied based on a late application.

[14] The Appellant feels that that the system does not support people trying to be self-sufficient and that she has been a stay at home mother most of her life. She had been applying for employment but has only been called back by two places. She is in the process of getting a divorce, her former husband left her with debt and she has had to move in with her mother.

[15] At the hearing, the Appellant stated that after she lost her employment she started looking for work. She also took a course. She sold her house and moved in with her mother using her savings to support herself. She had never applied for Employment Insurance benefits before.

[16] In April of 2013 she had surgery and a friend suggested that she should apply for benefits. She did not and continued to look for work.

[17] She feels that she was punished for using her own financial resources.

SUBMISSIONS

[18] The Appellant submitted that:

- a) She has never applied for benefits and was unaware of her eligibility and feels she should not be denied based on a late application.
- b) She did not apply immediately because she thought she would find employment and while searching for employment she lived off of her savings. Once her savings ran out she applied for Employment Insurance benefits.
- c) She believes that she acted responsibly with good intentions. She did not want to abuse or cheat the system; she exhausted her efforts and funds before receiving government assistance and has been diligent in her attempts to obtain employment.

[19] The Respondent submitted that:

- a) The Appellant did not act like a “reasonable person” in her situation would have done to verify her rights and obligations under the Act. Specifically she made no contact with the Commission to learn her rights and obligations, and was not prevented from filing in a timely manner. She supported herself throughout her search for employment which is commendable however this does not support good cause for the delay.
- b) The Appellant provided that there were personal issues in her life however she was able to take training for a new occupation and had worked in this capacity so it is reasonable to assume that she would be capable of applying for benefits.

- c) Jurisprudence has long supported that not wanting to burden the system and choosing to seek employment rather than applying for Employment Insurance may be admirable but it is not considered good cause for delay especially given the fact that the delay was more than a year.

ANALYSIS

[20] For her initial claim for benefits to be antedated to December 31, 2013, the burden of proof rests with the Appellant to prove that she:

- a) qualified for benefits as of December 31, 2013; and
- b) had good cause, throughout the period, for the delay in making the initial claim for benefits.

[21] According to the Federal Court of Appeal (FCA), to show good cause for the delay in making an initial claim for benefits, claimants must show that they acted as a reasonable and prudent person would have done in the same situation to satisfy themselves of their rights and obligations under the Act (*Mauchel v. Attorney General of Canada* 2012 FCA 202; *Bradford v. Canada Employment Insurance Commission* 2012 FCA 120; *Attorney General of Canada v. Albrecht* A-172-85).

[22] The FCA has further found that unless there are exceptional circumstances, a reasonable person is expected to take reasonably prompt steps to understand their entitlement to benefits and obligations under the Act (*Attorney General of Canada v. Kaler* 2011 FCA 266; *Attorney General of Canada v. Innes* 2010 FCA 341; *Attorney General of Canada v. Somwaru* 2010 FCA 336).

[23] The evidence before the Tribunal indicates that the Appellant did not make any efforts to contact Service Canada to inquire about benefits until January 13, 2015. The Appellant's reason for the delay was that she has never applied for benefits and was unaware of her eligibility. She also believed that she would find employment and while searching for employment she lived off of her savings. Once her savings ran out she applied for Employment Insurance benefits.

[24] The Respondent submitted that the Appellant did not act like a reasonable person in her situation would have done to verify her rights and obligations under the Act. She could have contacted and asked Service Canada whether he was entitled to benefits.

[25] After considering all the evidence from both parties, the Tribunal finds that the Appellant could have inquired with the Respondent to determine her entitlement to Employment Insurance benefits with a visit to her local Service Canada office, a telephone call to Service Canada, or an enquiry through the Service Canada website.

[26] The Tribunal finds on the balance of probabilities that a reasonable and prudent person would not have waited as long as the Appellant did to satisfy herself of her rights and obligations under the Act. Someone that has lost their employment and are in need of financial assistance would have taken steps to inquire with the Commission as to what the steps are in order to establish a claim.

[27] Additionally, the Tribunal finds that the circumstances of the Appellant, in that she delayed in applying because she didn't know that he could have applied back in December 31, 2013 are not exceptional circumstances.

[28] The Tribunal agrees with the Respondent's submission that not wanting to burden the system and choosing to seek employment rather than applying for Employment Insurance may be admirable but it is not considered good cause for delay especially given the fact that the delay was more the a year.

[29] The Appellant also stated that she feels that she has been penalized because of her lack of knowledge. The Tribunal cannot assign any weight to this argument because the Courts have long held that ignorance of the law and good faith, are insufficient reasons to amount to good cause.

[30] The Tribunal is supported in this finding by the FCA in (*Canada v. Carry*, 2005 FCA 367). In paragraphs 4-5, Justice Linden made clear that a claimant is under a positive obligation to ascertain her obligations under the Act:

“The Umpire affirmed the decision of the Board on the basis that it was not unreasonable to hold that there was good cause in this case. The jurisprudence of this Court, however, clearly does not permit such a conclusion in this case in that a reasonable person is expected to take reasonably prompt steps to determine her entitlement to Employment Insurance benefits. Ignorance of the law and good faith, the reasons offered for the delay of nine months in this case, have been held to be insufficient to amount to good cause”.

[31] Also in FCA A-549-92, the Court confirmed that acting in good faith and choosing to seek employment rather than receive benefits is not considered good cause.

“We reach this conclusion with some reluctance for, like the Umpire, we are satisfied that Mr. Smith acted throughout in good faith. The delay in making the claim was induced by the best of possible motives on his part - that of seeking new employment rather than falling back on unemployment insurance benefits. Such motives, pure as they were, do not on the present state of the law allow him to antedate his claim on the ground that he had "good cause" for the delay in making it.”

[32] For all the above reasons, the Tribunal finds that the Appellant failed to show good cause throughout the entire period of the delay in filing her claim for Employment Insurance benefits.

[33] The test for an initial claim for benefits to be antedated to an earlier date in subsection 10(4) of the EI Act is a two part test. The evidence must establish that the Appellant passes both parts of the test or fails one or both parts of the test. In this case, the Tribunal found that the Appellant did not prove that she had “good cause” for the entire period of the delay (second part of the test). Therefore the Tribunal did not make a finding on the first part of the test.

[34] Finally, the Tribunal finds that the Respondent considered all evidence before them before determining whether the Appellant was entitled to benefits.

CONCLUSION

[35] The appeal is dismissed.

Takis Pappas

Member, General Division - Employment Insurance Section